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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 403

M. I. ANGLIN AND S. A. ANGLIN,
Petitioners,

vs.

THEODORE KARES,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA, AND BRIEF IN SUPPORT THEREOF

W. D. BELL,
Counsel for Petitioners.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA, AND BRIEF IN SUPPORT THEREOF

To the Honorable the Supreme Court of the United States:

The Petition of M. I. Anglin and S. A. Anglin respectfully shows to this Court:

I

That they are each citizens and residents of the United States of America and of the State of Florida, and as such are entitled to all of the rights, privileges and immunities guaranteed to citizens of the United States against infringement by the States by Section One of the Fourteenth Amendment to the Constitution of the United States.

II

Summary and Short Statement of the Matters Involved

Respondent brought suit February 18, 1946, in the Circuit Court of Broward County, Florida, upon the Chancery side thereof, against Petitioners for the purpose of cancelling an Agreement of Petitioners with one Cornelius B. Fish and one Emma Fish dated October 21, 1930, and for cancelling a Tax Deed from the State of Florida to one J. W. Anglin, dated May 19, 1934, which was conveyed by the said J. W. Anglin to Petitioners April 24, 1935. The Bill alleged that the Respondent deraigned his title from the Executors of the Last Will and Testament of Cornelius B. Fish, deceased. The Bill further alleged that no part of the consideration had been paid on the said Contract, and that under said Contract it was the duty of Petitioners to pay the taxes, but that they allowed the same to become delinquent and the property sold, and either permitted or procured the said J. W. Anglin to buy the property for them. That the Respondent, claiming title through mesne conveyances from the Executors of the Last Will and Testament of Cornelius B. Fish, deceased, had made demand upon Petitioners November 3, 1945 to fulfill the Contract, and that they had failed and refused so to do. The Bill did not allege that Petitioners went into possession under the Contract.

Petitioners filed a Motion to Dismiss, among the grounds for which was that the Bill showed upon its face that Petitioners claimed title and possession under a Tax Deed, and that more than four years had elapsed, which is the statutory limitation under which one may hold under a Tax Deed in the State of Florida for his title to become absolute. This Motion was overruled by the Court, and Petitioners filed their Answer and Amended Answer in

which they averred that they went into possession under the said Tax Deed in good faith after they acquired the assignment thereof from J. W. Anglin, and that they had been in actual, open, notorious, continuous and exclusive possession of the land since that time. That it was not their duty to pay the taxes for the year 1930, for which the land was sold in 1931, and by reason of which sale J. W. Anglin obtained a Tax Deed in 1934 which he conveyed to Petitioners in 1935.

The cause came on to be heard upon the evidence taken before a Special Master, Respondent offering copies of deeds under which he claimed, deraigning title from the Executors of the Last Will and Testament of Cornelius B. Fish, deceased. The Respondent, through his counsel, entered a stipulation in the record that the Petitioners have been in actual, open, notorious, adverse and exclusive possession of the premises at all times alleged in their Answer and Amended Answer (R. 23). The Circuit Court of Broward County entered a Decree in favor of the Respondent and against Petitioners December 20, 1946, which Decree (R. 36), as well as all of the pleadings and evidence in the case, is set forth in the Transcript of Record hereto attached and made a part of this Petition as if set forth herein (R. 1-41).

On December 30, 1946, the Defendants filed their Motion for Rehearing, one of the grounds of which was, "because it appears from the record that said property has been held in open and undisputed possession and title to same for a period of more than seven years prior to the commencement of this suit" (R. 38), which Motion for Rehearing was overruled by the Court January 15, 1947 (R. 39). Petitioners appealed their case to the Supreme Court of Florida February 6, 1947 (R. 42). The matters assigned as error were the ruling of the Court upon Petitioners'

Motion to Dismiss the Bill of Complaint, the receiving in evidence of the instruments introduced by the Respondent over the objection of the Petitioners as they appear in the Transcript of Record, the Final Decree entered on the 20th day of December, 1946, and the Order Denying Petitioners' Motion for Rehearing dated January 15, 1947. After hearing said cause, the Supreme Court of Florida filed its Opinion and Judgment July 15, 1947, affirming the Judgment of the Circuit Court of Broward County, Florida (R. 43-44). Thereafter, before said Judgment became absolute, Petitioners filed their Petition for Rehearing within the time allowed by the Court (R. 44-47), which Petition was denied by said Court July 30, 1947 (R. 46). Thereafter, Petitioners applied to the Supreme Court of Florida for permission to file an Extraordinary Motion for Rehearing in the Supreme Court of Florida, and for leave to file a Bill for Review in the lower Court, each of which Motions were denied (R. 59).

III

Reasons Relied on for the Allowance of the Writ

The following matters of substance are admitted by the pleadings or by stipulations of the parties or shown by the record:

a. It is not alleged and no evidence was introduced to show that Petitioners ever went into possession under the Agreement between Cornelius B. Fish and Emma Fish, his wife, dated October 21, 1930; and it is shown by the evidence and admitted by the pleadings that no part of the consideration was ever paid, and that the time for such payment had wholly expired before the issuance of the Tax Deed in question.

b. It was alleged by Petitioners in their Answer and Amended Answer that after the Assignment of the Tax Deed by J. W. Anglin to them on April 24, 1935, and prior to conveyance and transfer of title to the Respondent or his predecessors in title, that they went into actual possession of said premises and have held same and been in actual, open, notorious, exclusive and adverse possession of said premises since the latter part of the year 1935 until the filing of this suit, and have kept paid up all taxes and assessments against said premises until the present time (R. 17). The following stipulation admits this (R. 23):

> "Mr. Chancey: Plaintiff rests and Plaintiff admits that the defendants have had actual, open, notorious, adverse and exclusive possession of the property described in Plaintiff's Bill *at all times mentioned in Defendants' Answer as amended.*" (Italics supplied)

c. The pleadings show that the parties did not claim to deraign their title from the same source, and that the Respondent, who was the plaintiff in the suit in the Circuit Court of Broward County, Florida, did not deraign from a common source with that of the Petitioners, neither did he deraign it from the sovereign. And he produced no evidence of title from Emma Fish, one of the parties to the said Contract.

d. It is shown by the Contract offered in evidence that it contained a provision that Petitioners were to pay taxes levied against the premises subsequent to the year of the Contract, and that the property was not sold for any taxes levied subsequent to the year of the Contract.

The main question relied on by the Petitioners is that they went into possession of the premises as shown by the record in 1935 after the alleged Contract expired, and that it is admitted that they have been in actual, open, notorious, exclusive and continuous possession since that

time. It is the contention of Petitioners that the Circuit Court of Broward County, Florida deprived them of the right of possession and title to property deraigned by them from the State of Florida after the statute of limitations prescribed by the State of Florida for the attack upon said Deed from the State of Florida had wholly expired. The right which they obtained under said Deed by virtue of the statute in said case made and provided was a vested right of which they could not be deprived by the decision of the Court. That the action of said Court in rendering said decision deprived them of due process of law and the equal protection of the laws of the State of Florida.

A second question relied upon by Petitioners is that Respondent produced no title to said property sufficient to support the Decree rendered.

IV

Petitioners represent that this Court has jurisdiction to review the Decree in question by virtue of Section 344, subparagraph (b), Title 28, F. C. A.

V

Assignments of Error

1. The Circuit Court of Broward County, Florida, erred in holding that the title of Petitioners could be divested when they went into possession under a Tax Deed from the State of Florida and had been continuously in actual, open, notorious, adverse and exclusive possession for more than seven years next preceding the filing of the Bill of Complaint, the said period being the statute of limitations in the State of Florida for one who holds adverse possession under any color of title in the State of Florida; and the said Circuit Court in rendering, and the said Supreme Court in affirming, said decision, deprived them of a vested

right guaranteed to them by Section One of the Fourteenth Amendment to the Constitution of the United States by denying them due process of law and the equal protection of the laws of the State of Florida.

2. The decision of said Courts divested them of their property and delivered the same to Respondent without requiring Respondent to show title to said property, thereby denying them due process of law in contravention to the Fourteenth Amendment to the Constitution of the United States.

VI

Objections were duly made to the rulings of the Court as set forth in Petitioners' Motion to Dismiss (R. 12) and their Motion for Rehearing in the lower Court (R. 38); and the rulings of the lower Court were duly assigned as error and appeal taken to the Supreme Court of the State of Florida. And the Supreme Court of the State of Florida affirmed the errors of the lower Court by affirming its Judgment; and your Petitioners, within the time allowed by law and the rule of the Supreme Court of Florida, duly filed their Petition for Rehearing before the Supreme Court of Florida in which they, among other things, charged and alleged as follows (R. 44-47):

> "2. The Court overlooked the fact that the vendors had never assigned their interest in and to the contract of sale for the property to appellee and that until such assignment was made of record appellee could not under any ground claim title to the property which he undertook to acquire from his grantor.
>
> 3. The Court overlooked the fact that appellants were in actual occupancy and possession of the property in question from the 24th day of April, A. D. 1935 (R. 15), admitted by appellee (R. 23) before the filing of this suit under a new deraignment of title from the State of Florida; that they owned, were in

possession and had held said property in their possession for a period of time more than seven years prior to the acquirement of any claim or title by appellee, on the 8th day of August, 1945, as shown by his deed recorded the 19th day of October, 1945 (R. 34) and have been in continuous possession of said property to the filing of this suit, claiming title under Sec. 95.12, Florida Statutes Annotated, 1941.

4. The Court overlooked the fact to deprive appellants of said property would be a confiscation of their property without due process of law and without just compensation contrary to the Constitution of the United States, Amendment 14, Section 1.

5. The Court overlooked the fact to deprive the appellants of said property and to allow said verdict of the lower court to stand would have the effect of appellee taking and depriving appellants of their property without due process of law and without just compensation contrary to Declaration of Rights of the Constitution of Florida, Section 12.

6. The Court failed to note the difference in fact of this cause to that of the case of Torreyson *v.* Dutton, 137 Fla. 683, 188 So. 805 (R. 39).

Wherefore, appellants respectfully insist that the Appellate Court should review the opinion heretofore rendered in this cause and reverse and set aside the judgment of the trial court therein."

which Petition was denied by said Court July 30, 1947 (R. 46).

VII

Wherefore, your petitioners respectfully pray that a Writ of Certiorari may be issued out of and under the seal of this Court, directed to the Supreme Court of the State of Florida, commanding the said Court to certify and send to this Court, on a day therein to be designated, a full and

complete transcript of record and all proceedings of the Supreme Court of Florida in the said case entitled M. I. Anglin and S. A. Anglin, Appellants, v. Theodore Kares, Appellee, to the end that said case can be reviewed and determined by this Court as provided by the rule of this Court and by the statute in such case made and provided, and that your Petitioners may have such other and further relief or remedy in the premises as this Court may deem appropriate and in conformity with the rules of this Court and the said statutes, and that the said Judgment of the Supreme Court of the State of Florida in the said case and every part thereof may be reversed by this Honorable Court.

M. I. ANGLIN,
S. A. ANGLIN,
Petitioners.

W. D. BELL,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES

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BRIEF AND ARGUMENT FOR PETITIONERS

Preliminary Statement

This cause is before the Court upon Petition for Writ of Certiorari for review of the Judgment of the Supreme Court of Florida in the case of *M. I. Anglin and S. A. Anglin, Appellants* v. *Theodore Kares, Appellee,* therein lately pending.

The Petition is attached hereto and made a part of this Brief and comprehends all of the matters set forth in Rule 27 of this Court. The errors assigned are those set forth in the foregoing Petition and are herein specified.

Specification of Errors Assigned

The errors assigned and points to be argued, as set forth in the attached Petition for Certiorari, are as follows:

1. The Circuit Court of Broward County, Florida, erred in holding that the title of Petitioners could be divested when they went into possession under a Tax Deed from the State of Florida and had been continuously in actual, open, notorious, adverse and exclusive possession for more than seven years next preceding the filing of the Bill of Complaint, the said period being the statute of limitations in the State of Florida for one who holds adverse possession under any color of title in the State of Florida; and the said Circuit Court in rendering, and the said Supreme Court in affirming, said decision, deprived them of a vested right guaranteed to them by Section One of the Fourteenth Amendment to the Constitution of the United States by denying them due process of law and the equal protection of the laws of the State of Florida.

2. The decision of said Courts divested them of their property and delivered the same to Respondent without requiring Respondent to show title to said property, thereby denying them due process of law in contravention to the Fourteenth Amendment to the Constitution of the United States.

ARGUMENT

Point One

The Circuit Court of Broward County, Florida, erred in holding that the title of Petitioners could be divested when they went into possession under a Tax Deed from the State of Florida and had been continuously in action, open, notorious, adverse and exclusive possession for more than seven years next preceding the filing of the bill of complaint,

the said period being the statute of limitations in the State of Florida for one who holds adverse possession under any color of title in the State of Florida; and the said Circuit Court in rendering, and the said Supreme Court in affirming, said decision, deprived them of a vested right guaranteed to them by Section One of the Fourteenth Amendment to the Constitution of the United States by denying them due process of law and the equal protection of the laws of the State of Florida.

The applicable Florida statutes are as follows:

95.12 F.S.A.
"*Real actions; limitations generally*

No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises in question within seven years before the commencement of such action."

196.06 F.S.A.
"*Limitations upon recovery of land in possession of tax deed holder.*

When the holder of a tax deed goes into actual possesssion, occupancy and use of the land embraced in such tax deed, and so continues for a period of four years, no suit for the recovery of the possession thereof shall be brought by a former owner or other adverse claimant, unless such suit be commenced within, or prior to, the said period of four years after the holder under such tax deed has entered into the actual possession, occupancy and use of the land embraced in said tax deed; and the holder of such tax deed, where the said real estate is in adverse actual possession, occupancy and use of any person, shall not be entitled to recover possession of such real estate under such tax deed, unless suit for such recovery shall be brought within four years from the date of such tax deed;

> provided, however, that infants, persons of unsound mind or under guardianship or imprisonment may commence suit or proceedings under this section within three years after the recovery or discontinuance of such disability."

Legal limitations are applied to equitable rights which are legal. *Nuveen* v. *Board of Public Instruction,* 88 Fed. 2d. 175, 179; *McNair* v. *Burt,* 68 Fed. 2d. 814; *Webb* v. *Powell,* 87 Fed. 2d. 983.

The admissions made by the parties in their pleadings and stipulation show that Petitioners went into possession of the premises described in the pleadings under a conveyance from one J. W. Anglin of a Tax Deed from the State of Florida, issued on the 19th day of May, 1934, to J. W. Anglin, who conveyed the same to Petitioners April 24, 1935, and from said date they have been in actual, open, notorious, adverse and exclusive possession of the property at all times since that time. It will be noted that there is no allegation in the Bill and no evidence that Petitioners went into possession under the Contract with Cornelius B. Fish and Emma Fish, dated October 21, 1930. No consideration was ever paid upon said Contract and the said Contract was to be fully performed within three years, and time was made of the essence of the Contract. J. W. Anglin did not obtain a Tax Deed to this property until 1934, and the Petitioners obtained a deed from him in 1935 and went into possession under said deed.

The parties interested are charged with knowledge of the conveyance of said land from the time that the Tax Deed and the conveyance from the grantees therein to the Petitioners were recorded. Petitioners claimed the property as owners and exercised acts of ownership over it, unquestioned and without objection until the statutes of limitations had run, namely, Sections 196.06 F.S.A. and 95.12

F.S.A., Laws of the State of Florida. They, therefore, had a vested interest in the property which the Judgment of the Circuit Court of Broward County, Florida, destroyed by its decree, which was affirmed by the Supreme Court of the State of Florida. This deprived Petitioners of their property without due process of law.

In the case of *Stewart* v. *Keyes,* 295 U. S. 403, 55 S. Ct. 807 (text S. Ct. 813), this Court said:

> "As respects suits to recover real or personal property where the right of action has been barred by a statute of limitations and a later act has attempted to repeal or remove the bar after it became complete, the rule sustained by reason and preponderant authority is that the removing act cannot be given effect consistently with constitutional provisions forbidding a deprivation of property without due process of law. 'The reason is,' as this court has said, 'that, by the law in existence before the repealing act, the property had become the defendant's. Both the legal title and the real ownership had become vested in him, and to give the act the effect of transferring this title * * * would be to deprive him of his property without due process of law.' "

It necessarily follows that, if the Legislature cannot change the law to prejudice vested rights, neither can the Court enter a decree destroying such rights even though the statute has not been changed. A Judgment of a State court, whether it be authorized by statute or not, whereby private property is taken for the State or under its direction, without compensation made or secured to the owner, is, upon principle and authority, wanting in the due process of law required by the Fourteenth Amendment of the Constitution of the United States, and the affirmance of such Judgment by the highest court of the State is a denial by that State of a right secured to the owner by that instrument. *Smyth* v. *Ames,* 169 U. S. 466, 523, 43 L. Ed. 819;

Chicago etc., R. Co. v. *Chicago,* 166 U. S. 226, 241, 41 L. Ed. 979; *San Diego Land etc., Co.* v. *National City,* 174 U. S. 739, 754, 43 L. Ed. 1154; *Barney* v. *City of New York,* 193 U. S. 430, 440, 48 L. Ed. 737. See also, *Scott* v. *McNeal,* 154 U. S. 34, 38 L. Ed. 896; Ex parte Virginia, 100 U. S. 339, 25 L. Ed. 676.

With regard to titles vesting after statutes of limitations have run, see *Campbell* v. *Holt,* 115 U. S. 620, 623, 6 S. Ct. 209, 211, 29 L. Ed. 483; *Scott* v. *Empire Land Co.,* 24 Fed. 2d 417-418; *Teall* v. *Schroder,* 158 U. S. 172, 39 L. Ed. 938.

It appears from this record that the title of Petitioners in the property had become a vested right which Petitioners claimed as citizens of the United States of America and which the State of Florida, through its Courts, has deprived them, contrary to Section One of the Fourteenth Amendment to the Constitution of the United States.

Thus the Courts of the State of Florida in the instant case have decided a Federal question of substance in conflict with the decisions of this Court cited in this Brief. Petitioners have been deprived of valuable property by the State of Florida through its Courts, which are the agencies of the State of Florida. They are without remedy unless Certiorari issue to the Supreme Court of Florida to correct this injustice.

POINT TWO

The Decision of said courts divested them of their property and delivered the same to Respondent without requiring Respondent to show title to said property, thereby denying them due process of law in contravention to the Fourteenth Amendment to the Constitution of the United States.

Petitioners did not deraign their title from Cornelius B. Fish, but from the State of Florida. The Contract held by Cornelius B. Fish and Emma Fish, his wife, was held by them as an estate in entirety, and upon his death, his wife became his sole survivor and the owner of the Contract and the rights thereunder. See *Bailey* v. *Smith*, 89 Fla. 303, 103 So. 833. There was no evidence of the assignment of said Contract, and Respondent showed no muniment of title from Emma Fish, the survivor.

There was no evidence that the Executors of the Last Will and Testament of Cornelius B. Fish were ever seized and possessed of the title to said property.

It is admitted that Petitioners were in actual, open, notorious and exclusive possession of the property at the time of the suit and for more than seven years next preceding, deraigning their title from the State of Florida. It then became necessary for the Respondent to produce a better title from the ultimate source. The Respondent had no standing in a court of equity under the laws of Florida.

See *Atlantic Beach Corporation* v. *Hall*, 143 Fla. 778, 197 So. 464; *Hughes* v. *Hannah*, 39 Fla. 365, 22 So. 613, 617; *Trustees Internal Improvement Fund* v. *Gleason*, 39 Fla. 771, 23 So. 589.

The decision of the Courts of Florida in divesting Petitioners of their property was arbitrary and lacked the fun-

damental elements of due process of law. And they will suffer great and irreparable injury unless a Writ of Certiorari issue.

Conclusion

Having made it appear that the questions raised in the Courts of Florida involved questions of due process and other constitutional questions which give this Court jurisdiction, we respectfully pray that Certiorari be granted so that the entire record may be examined by this Court.

Respectfully submitted,

W. D. BELL,
Counsel for Petitioners.

(2839)